IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL (AGAINST CONVICTION) NO. 1164 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR. JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No

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TARJUBHAI VEHLABHAI NAIKA
Versus
STATE OF GUJARAT

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Appearance:
HCLS COMMITTEE(4998) for the Appellant(s) No. 1
MR. YOGENDRA THAKORE(3975) for the Appellant(s) No. 1
MR JAY MEHTA APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR. JUSTICE R. T. VACHHANI

Date : 16/04/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)

1. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence dated 05.05.2016 passed by the learned 3rd Additional Sessions Judge, Vadodara at Chhotaudepur in Sessions Case No.55 of 2014 for the offences punishable under Section 302 of the Indian Penal Code, whereby the appellant–accused has been sentenced for the offence punishable under Section 302 of the IPC to undergo

imprisonment for life with fine of Rs.5,000/-, in default, to undergo three months SI, the appellant has preferred the present appeal under Section 374 of the Code of Criminal Procedure, 1973 ("the Code" for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1 As per the case of the prosecution, the present appellant – accused on 16/06/2014 at about 9:30 hours had asked the deceased as to why did she not keep with him any relationship and why did she say no to him and thereby got excited and inflicted a knife blow on the chest and left ear side of the face, as also inflicted indiscriminate blows on the left hand and thus with an intention to kill her committed her murder and thereby committed the offence punishable under Section 302 of the Indian Penal Code. It is also the case of the prosecution that the appellant – accused had also given the filthy abuses to the deceased and thereby committed offence punishable under Section 504 of the Indian Penal Code.

2.2 Accordingly, FIR being CR No.45 of 2014 came to be registered with Changodar Police Station. The Police after investigation charge-sheeted the accused for the aforesaid offences before the learned JMFC, Court. However, as the said Court lacks jurisdiction to try offence under Section 302 IPC, the case was committed to the Sessions Court. On conclusion of evidence on the part of the prosecution, the learned Sessions Court put various incriminating circumstances appearing in the evidence to the respondent-accused so as to obtain explanation/answer as provided under Section 313 of the Code. In the further statement, the respondents-accused denied all incriminating circumstances appearing against them as false and further stated that he is innocent and a false case has been filed against him. After examining the evidence, witness

testimonies and submissions from both sides, the learned Sessions Court recorded the finding convicting the appellant-accused.

3. We have heard Mr.Yogendra Thakore, learned Advocate for the appellant – convict and Mr.Jay Mehta learned APP for the respondent-State and minutely examined oral and documentary evidence adduced and produced before the learned Sessions Court concerned.

4. Learned advocate Mr.Thakore appearing for the appellant– accused has submitted that the prosecution has failed to prove its case beyond the reasonable doubt and therefore, learned Sessions Court has erred in convicting the appellant – accused. He would submit that the witnesses examined before the Court, mainly three witnesses, can be said to be tutored witnesses and they were not present at the time of the incident as per the evidence of Defence Witness. He would further submit that three main witnesses who have supported the case of prosecution is son of the accused and rest two are the sons of the complainant; however the other brother of the complainant has not supported the case of prosecution and therefore, the prosecution has failed to prove its case beyond reasonable doubt.

4.1 He would submit that the prosecution has not proved the aspect of accused having made any illicit relationship with the deceased beyond reasonable doubt however the learned Sessions Court has not appreciated this fact and instead made the basis thereof to prove the intention of the appellant behind committing the murder.

4.2 It is further submitted on behalf of the appellant that PW No.10 and 11 are not mentioned as eye-witness in the FIR and not a single word is mentioned therein and therefore this creates doubt as to veracity of the

said witnesses and in his submission, learned Sessions Court has not considered this fact and therefore he would submit to interfere with the finding of the learned Sessions Court. Learned advocate for the appellant would submit that insofar as the recovery of the alleged weapon used in commission of the crime is concerned, the same has not been proved beyond reasonable doubt since as per the case of prosecution, the accused had fled away from the spot after commission of the crime and had not returned ever. Thus, as to how and when the blood stained weapon and clothes could be discovered from the home of the accused.

4.3 Learned advocate Mr.Thakore for the appellant – accused would submit that considering the infirmities and contradictions in the evidence so adduced by the prosecution, the learned Sessions Court has committed a grave error in recording the conviction of the appellant – accused. By making the above submissions, learned advocate for the appellant – accused would submit to allow this appeal and to quash and set aside the judgment and order of conviction and sentence.

5. Mr.Jay Mehta, learned APP appearing for the respondent – State submits that the impugned order of conviction and sentence does not require to be interfered with as the learned Sessions Court has after thorough appreciation of evidence has come to the conclusion and recorded the conviction of the appellant – accused on the basis of the evidence adduced before the Court. It is further submitted that the evidence produced on record proves the involvement of the accused in the commission of crime in question. He has further submitted that evidence of the witnesses examined before the Court has supported the case of prosecution and narrated the incident as it had happened. It was submitted that no such omission or contradiction in the evidence of the said witnesses have come on record to discard their evidence. She has

further submitted that the prosecution witnesses have deposed before the Court narrating the entire chain of sequence whereby the involvement of the accused is proved which corroborates with the scientific evidence produced and proved by the prosecution and therefore, the judgment and order of conviction and sentence may not be interfered with.

6. Heard Mr.Thakor, learned Advocate for the appellant – convict and Mr.Mehta, learned APP for the respondent-State and perused the deposition of witnesses as also documentary evidence placed on record as well as the order passed by the learned Sessions Court.

7. At the outset, if the facts of the case on hand is examined, it would appear that case of the prosecution is that appellant – accused had gone to the deceased and asked her as to why did she not keep any relationship with him and when deceased expressed her reluctance, the accused got angry and inflicted a knife blow on her chest and on the left side ear side, as also on the left hand of the deceased resulted into her death.

8. In background of the above facts, if the evidence adduced by the prosecution is examined, PW No.1 –Dr.Pankhil Sureshbhai Gupta, Medical Officer, who has been examined at Exh.7 who conducted the postmortem on the body of the deceased. This witness has examined the body of the deceased after following due procedure and has stated the cause of death of the deceased was hemorrhagic shock. This witness has deposed in his testimony that injuries caused to the deceased on chick, neck and on the chest are sufficient to cause her death. This witness has deposed that postmortem note was prepared by him of his own handwriting and produced at Exh.10. This witness has also described total eight external injuries found on the body of the deceased and those injuries are prior to cause of the death of the deceased. Witness has been

cross-examined by the defence; but nothing sort of any such material has come on record to disbelieve the evidence of this witness.

9. PW No.9-Jitubhai Tarjubhai Naika, complainant, son of the accused and husband of the deceased, is examined at Exh.23. This witness has deposed in his testimony that he was living with his family and by doing labour work he was earning his livelihood. Witness has further deposed that accused is his father and since the accused was beating his mother she was sent back to her brother's home. Witness has deposed that prior to incident in question, the accused had tried to keep illicit relationship with his wife but Panch of the Village People had disposed of the matter. This witness has further deposed that incident in question took place prior to about one year ago at about 9:30 a.m. where he alongwith his brother and two children were working in the Vada which is situated nearby his home and at that time his wife was in the home and she started screaming like "beating, beating" and therefore they went inside the home and found that his father inflicted knife blow to his wife and as soon as they entered into the home, his father started running and thereafter having armed with knife his father had fled away from the spot on the motorcycle and his wife got injuries on the chest, face and accused inflicted injuries with knife and due to the said injuries his wife was lying on the doorstep of the house and died there. This witness has deposed that due to screaming village people gathered and thereafter the complaint was filed which is produced at Exh.24.

This witness has been cross-examined by the defence; however nothing sort of any such material to discard his evidence has come on record. This witness has denied the suggestion made by the defence that any such dispute with regard to property had led the incident in question. The presence of this witness at the scene of incident is natural as he was

the husband of the deceased and witness had himself seen the accused running away from the spot after the occurrence of incident. The prosecution has proved from the evidence of this witness the factum of accused was present at the scene of offence at the time of commission of crime and running away after committing a crime.

10. PW No.10 – Rajeshbhai Jitubhai Nayka, son of the complainant, has been examined at Exh.26. This witness has deposed in his testimony that he was living with his parents and deceased was his mother and accused was his grandfather. This witness has deposed in his testimony that incident in question took place prior to one year at about 9:30 a.m., while they were working in the Vada and at the time of incident the accused asked something to his mother and therefore she started screaming and they went inside the house and found that accused had inflicted a knife blow on the chest of his mother and while they caught hold of the knife, accused inflicted another blow on the right side of the ear and thereafter while they caught hold of the accused, the accused also tried to beat them and thereafter he ran away with the knife on the splender bike and his mother was lying at the door and died thereafter. This witness has identified the knife shown to him used in commission of the crime.

This witness has been cross-examined by the defence; however nothing sort of any such material to discard his evidence has come on record. This witness has denied the suggestion made by the defence that his father had gone to purchase kerosene at the time of occurrence of the incident. The presence of this witness at the scene of incident is natural as he was the husband of the deceased and witness had himself seen the accused running away from the spot after the occurrence of incident. The prosecution has proved from the evidence of this witness the factum of

accused was present at the scene of offence at the time of commission of crime and running away after committing a crime.

11. PW 11 – Arjunbhai Jitubhai Nayka, son of the complainant has been examined at Exh.27. This witness has deposed in his testimony that at the time of incident, he was living with his parents, brother, uncle, aunt and grandfather and at that time his grandmother was living at Karajvant Village and incident took place prior to one year at about 9:30 a.m. and while he alongwith his brother and father were working at that time his mother was cooking and his grandfather had reached to home thereafter screaming was started and they rushed to there where he found that his grandfather was beating knife to his mother on the chest and chick as also on the ear and accused had also come to beat them. The accused had run away on the motorcycle and his mother was died at the door. Witness has identified the knife used in commission of the crime in question.

This witness has been cross-examined by the defence; however nothing sort of any such material to discard his evidence has come on record. The presence of this witness at the scene of incident is natural as he was the husband of the deceased and witness had himself seen the accused running away from the spot after the occurrence of incident. The prosecution has proved from the evidence of this witness the factum of accused was present at the scene of offence at the time of commission of crime and running away after committing a crime.

12. The argument of the learned advocate for the appellant – accused that merely because the witnesses are the relatives of the deceased, their evidence are not reliable and creditworthy. At this juncture, the beneficial reference can be made to the decision in case of ***M. Nageswara Reddy Versus The State of Andhra Pradesh and Others with The State of***

Andhra Pradesh Versus Kasireddy Ramakrishna Reddy and others [2022 LiveLaw (SC) 251] where the Hon'ble Apex Court has held in paragraph 10 thus:

> "*10. Having gone through the deposition of the relevant witnesses – eye-witnesses/injured eye-witnesses, we are of the opinion that there are no major/material contradictions in the deposition of the eye-witnesses and injured eye-witnesses. All are consistent insofar as accused Nos. 1 to 3 are concerned. As observed hereinabove, PW6 has identified Accused Nos. 1 to 3. The High Court has observed that PW1, PW3 & PW5 were planted witnesses merely on the ground that they were all interested witnesses being relatives of the deceased. Merely because the witnesses were the relatives of the deceased, their evidence cannot be discarded solely on the aforesaid ground. Therefore, in the facts and circumstances of the case, the High Court has materially erred in discarding the deposition/evidence of PW1, PW3, PW5 & PW6 and even PW7.*"
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> ***(emphasis supplied)***

Thus, the aforesaid arguemnt does not find any force as the presence of the witnesses who are relatives of the deceased at the time of incident is natural and it is the case of prosecution that they were already present prior to and post the incident and therefore their evidence is reliabel piece of evidence as believed by the learned Sessions Court to hold the conviction.

13. The next facet of argument made by learned advocate for the appellant – accused is in regards to the conduct of the accused as in the present case the appellant – accused had run away after the incident and therefore, it creates doubt to believe the case of prosecution. At this

stage, it would be apt to refer to the decision of the Hon'ble Apex Court in case of ***Vivek Kalra vs. State of Rajasthan [(2014) 12 SCC 439]*** whereby it has been held that any behaviour or conduct of the appellant would be relevant if it had nexus with the offence under Section 302 of the IPC alleged to have been committed by the accused. Relevant observations made in paragraph 9 reads thus:

> *"9. It is true that PW 5 has stated that the appellant had a good behaviour and had no bad habit. Section 8 of the Evidence Act, 1872, however, provides that the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent to it. Hence, any behaviour or conduct of the appellant would be relevant if it had nexus with the offence under Section 302 alleged to have been committed by him. This Court has held in Vikramjit Singh v. State of Punjab at p. 314: (SCC para 17)*
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> > *"17. Conduct of an accused must have nexus with the crime committed. It must form part of the evidence as regards his conduct either preceding, during or after commission of the offence as envisaged under Section 8 of the Evidence Act."*

Thus, merely because the the appellant – accused after committing the crime in question had run away from the spot his conduct would be relevant to believe the case of the prosecution and the learned Sessions Court has rightly believed the said aspect.

14. Insofar as the recovery of alleged weapon used in commission of the crime at the instance of the accused is concerned, it is admissible in

the eye of law; but not the information that the crime was actually committed by the said weapons. At this juncture, a beneficial reference can be made to a decision in case of ***Rajendra Singh And Ors. Versus State Of Uttaranchal Etc., 2025 Livelaw (Sc) 980*** where the Hon'ble Apex Court while dealing with such aspect has observed as under:

> "*31. A simple reading of all the three provisions conjointly reveals that the first two provisions are substantive, whereas Section 27 is in the nature of an exception. Sections 25 and 26, at one hand, provide that no confession made to a police officer or to any person while in custody of the police, shall be admissible against a person accused of any offence, on the other hand, Section 27 provides an exception to the above provisions. It states that so much of the information, received from an accused person in custody of the police, whether in the nature of confession or otherwise, as related distinctly to the fact thereby discovered, may be admissible. This means that not all information disclosed by a person in police custody is required to be proved as against the accused person; only that part which distinctly relates to the discovery of a fact is admissible and can be proved.*
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> *32. In Pulukuri Kottaya and Ors. vs. The King Emperor 1 , the Privy Council while analysing the aforesaid three provisions of the Evidence Act, held that the fact of discovery, on information supplied by the accused is a relevant fact except in a case in which the possession or concealment of an object constitute the gist of the offence charged. Information supplied by a person in custody such as "I will produce a knife concealed in the roof of my house", only leads to the discovery of the knife concealed in the house of the informant, but whether the knife is proved to have been used in the*

commission of an offence is another question. So if the above information is followed by the words, "with which I stabbed A", those words would be inadmissible since they do not relate to the discovery of the knife from the house of the informant, but are rather independent in nature, amounting to confession of the crime which cannot be used against the person making it i.e. the accused, in view of prohibition contained under Sections 25 and 26 of the Evidence Act.

33. The aforesaid decision has recently been followed with approval by the Division Bench of this Court in Manjunath and Ors. vs. State of Karnataka2 wherein it has been said that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible, and the rest of the information stands excluded. In other words, the information leading to the recovery of the weapons of crime is admissible, but not the information that the crime was actually committed by the said weapons."

Thus, in the case on hand, the recovery of the weapon used in commission of the crime, at the instance of the accused is proved by the prosecution and believed by the learned Sessions Court.

15. In light of the above evidence re-appreciated by this Court, the undisputed facts emerging from the record are that (i) there was an intention on the part of the appellant – accused to kill the deceased as he was tried to keep an illicit relationship with the deceased to which earlier dispute was erupted which was disposed of with the intervention on the village people (ii) in denial of keeping such relationship, the accused went inside the house found the deceased alone and inflicted a knife blow on the deceased which resulted into her death at the same time (iii) after

committing the offence, the accused was seen by his own son who is complainant and two more persons who are children of the complainant run away from the spot having armed with knife which was ultimately recovered at the instance of the accused by way of discovery Panchnama.

16. Thus, the entire sequence of incident is proved from the evidence of the witnesses examined before the Court, more particularly, the cause of incident, presence of accused at the spot and running away from the spot after the incident is proved from the aforesaid evidence and learned Sessions Judge has rightly believed the same while convicting the appellant – accused.

17. Now, insofar as the non-believing of the defence witness is concerned, the learned Sessions Court has given the reasons as to why it was not believable as nothing has come from their evidence in support of the accused and therefore, considering the aforesaid aspect, the argument of the learned advocate of non-believing the defence witness would not come to the rescue of the accused.

18. Thus, from the aforesaid discussion made in consonance with the re-appreciation of the evidence, the factum of the events took place prior to and post the incident as narrated by the witnesses is proved by the prosecution and this Court does not find any infirmity as pointed out by the learned advocate for the appellant-accused.

19. In light of the above reasons, this Court does not find any substance in the appeal. The appeal must fails and is accordingly dismissed while confirming the judgment and order of conviction and sentence dated 05.05.2016 passed by the learned 3rd Additional Sessions Judge, Vadodara at Chhotaudepur in Sessions Case No.55 of 2014.

Records and Proceedings, if any, be remitted to the Court concerned forthwith.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

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